IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR.

O R D E R

Chanderjeet v. State of Raj. & Ors.

S.B.CIVIL WRIT PETITION NO.4113/1999
under Articles 226 and 227 of the Constitution of India.

Date of Order : 26th July, 2005

P R E S E N T

HON'BLE MR.JUSTICE GOVIND MATHUR

Mr. R.S.Saluja, for the petitioner.
Mr. B.L.Tiwari, Dy.Govt.Advocate.

BY THE COURT :

By a memorandum dated 11.8.1995 under Rule 16 of the Rajasthan Civil Services (Classification, Control and Appeal) Rules, 1958 (hereinafter referred to as “the Rules of 1958”) the explanation was sought from the petitioner, a constable in Rajasthan Police, for the allegations of misconduct levelled against him for remaining absent from duties unauthorisedly. The petitioner was charged for remaining absent from

duties from 11.3.1995 to 29.4.1995 and thereafter from 3.6.1995 to the date of issuance of memorandum under Rule 16 of the Rules of 1958 dated 11.8.1995.

The petitioner on receiving the memorandum under Rule 16 of the Rules of 1958 submitted an explanation dated NIL which is available on record as Anx.3. The petitioner averred in the reply that he remained absent from duties due to illness. Being dissatisfied with explanation submitted by the petitioner an inquiry officer was appointed by the disciplinary authority to inquiry into the allegations levelled against the petitioner.

The inquiry officer submitted his report dated 30.3.1996 to the disciplinary authority i.e. Superintendent of Police, Jodhpur. The disciplinary authority after considering the same imposed punishment of removal upon the petitioner. The disciplinary authority gave a specific finding with reasons to the definite charges levelled against him and found the petitioner guilty. The disciplinary authority while passing the order impugned dated 8.7.1996 also considered the fact that probation period of the petitioner was extended but he failed to improve his working and he was in habit of remaining absent from duties without any information. In these circumstances the petitioner was penalised by punishment of removal from services.

Being aggrieved by the same the petitioner preferred a review petition before his Excellency the Governor of Rajasthan as prescribed under Rule 34 of the Rules of 1958. The review petition preferred by the petitioner too stood rejected by an order dated 1.5.1999, hence the present writ petition is preferred by the petitioner before this Court under Articles 226 and 227 of the Constitution of India.

The sole contention of the petitioner is that the punishment imposed upon him i.e. of removal is disproportionate to the delinquency for which he was found guilty. It is contended by the petitioner that he remained absent from duty being ill, therefore, the reason for misconduct found proved against him was beyond his control. It is submitted by counsel for the petitioner that punishment of removal should not have been imposed upon the petitioner being a punishment disproportionate to the delinquency proved. The counsel for the petitioner to substantiate his contention placed reliance upon the judgment of Hon'ble Supreme Court in the case of Shri Bhagwanlal Arya v. Commissioner of Police, Delhi and others, reported in (2004)4 SCC 560.

In the case of Shri Bhagwanlal Arya (supra) Hon'ble Supreme Court held that punishment of dismissal/removal from service can be awarded only for

acts of grave nature or as cumulative effect of continued misconduct proving incorrigibility or complete unfitness for service. In the aforesaid case Hon'ble Apex Court was also dealing with the case of a police constable. In the aforesaid case the disciplinary authority awarded a punishment of removal while holding the delinquent employee guilty for remaining absent without leave though a legitimate reason was given to remain absent.

In the present case though the petitioner also stated that he remained absent from duties due to ill health but no sufficient evidence was produced by him before the inquiring authority in this regard. The disciplinary authority considered this aspect of the matter and gave a specific finding that no evidence was produced by the petitioner to prove that he was not in a position to attend duty due to medical reasons. The disciplinary authority also held that the petitioner was warned on various occasion and his probation was also extended but he failed to improve his working. This fact proves the incorrigibility acquired by the petitioner. The act of the petitioner is of continued misconduct, accordingly in present set of facts the law laid down in the case of Shri Bhagwanlal Arya (supra) is not applicable.

The reviewing authority considered all the contentions raised by the petitioner and has also

examined the order passed by the disciplinary authority. The reviewing authority refused to interfere with the matter being not suffered by any illegality.

I do not find any error in the order passed by the disciplinary authority or the reviewing authority which may warrant interference of this Court under Articles 226 and 227 of the Constitution of India.

In view of whatever discussed above the writ petition is devoid of merit and, therefore, the same is hereby dismissed.

(GOVIND MATHUR),J.

kkm/ps.